

MONTANA LEGISLATIVE HISTORY

Chapter 155 19 97

Bill H 19 S _____ Original bill & history ☒ c

H. Committee on TAXATION

Hearing Date(s) 1/11 x c

1/12 x c

EXEC. ACTION 1/28 x c

_____ c

Date Out _____ c

S. Committee on TAXATION

Hearing Date(s) 3/5 x c

EXEC. ACTION _____ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 19
 INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOCATE THE DUTIES OF CONDUCTING ADMINISTRATIVE TAX CASE HEARINGS BETWEEN THE DEPARTMENT OF REVENUE AND THE STATE TAX APPEAL BOARD; SPECIFYING PROCEDURES IN APPEALS FROM COUNTY TAX APPEAL BOARD DECISIONS AND FROM DEPARTMENT DECISIONS; ABOLISHING PROCEDURES INCONSISTENT THEREWITH; AMENDING SECTIONS 67-2220, 67-2221, 84-603, 84-709, 84-711, 84-1841, 84-4923.1, 84-5606.24, AND 84-5606.25, R.C.M. 1947; REPEALING SECTIONS 84-440, 84-602, 84-609, AND 84-710, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 84-709, R.C.M. 1947, is amended to read as follows:

"84-709. Appeal to state tax appeal board — hearing.

(1) Any person, firm, or corporation or the department of revenue in behalf of the state, or any municipal corporation, aggrieved by the action of any county tax appeal board, may appeal to the state board by filing with the county tax appeal board a notice of appeal, and a duplicate thereof with the state board, within ~~ten~~ (10) days after the receipt of the decision of the county board, which

notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the ~~capital~~ capital or such county seat as the board ~~shall deem~~ considers advisable to facilitate the performance of its duties or to accommodate parties in interest, and shall give to the appellant and to the county board at least ~~five~~ (5) days' notice of the time and place of such hearing.

(2) ~~at~~ At the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one ~~of~~ of its members, and the person so designated shall have and exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board, and the state board shall determine such appeal on the record so made.

(3) On all hearings at county seats throughout the

1 state, the state board or the member designated to conduct a
2 hearing may employ the local court reporter or other
3 competent stenographer to take and transcribe the testimony
4 received, and the cost thereof may be paid out of the
5 general appropriation for the board.

6 (4) In connection with any appeal under this section
7 the state board shall not be bound by common law and
8 statutory rules of evidence or rules of discovery and shall
9 ~~have the authority to may~~ affirm, reverse, or modify any
10 decision ~~appealable to the state tax appeal board; the, The~~
11 decision of the state tax appeal board shall be final and
12 binding upon all interested parties unless reversed or
13 modified by judicial review. To the extent this section is
14 in conflict with the Montana Administrative Procedure Act,
15 this section shall supersede ~~that act the Montana~~
16 ~~Administrative Procedure Act.~~ The state tax appeal board
17 shall may not ~~have authority to~~ amend or repeal any
18 administrative rule ~~or regulation of the department of~~
19 ~~revenue.~~ The state tax appeal board must give an
20 administrative rule ~~or regulation~~ full effect unless the
21 board finds any such rule ~~or regulation~~ arbitrary,
22 capricious, or otherwise unlawful."

23 Section 2. There is a new R.C.M. section that reads as
24 follows:

25 Direct appeal from department decision to state tax

1 appeal board — hearing. (1) A person may appeal to the
2 state tax appeal board any action of the department of
3 revenue involving:

4 (a) property centrally assessed under chapters 8, 9,
5 13, 54, 62, or 64 of this title;

6 (b) classification of property as new industrial
7 property;

8 (c) any other tax (other than the property tax)
9 imposed under this title; or

10 (d) any other matter in which such appeal is provided
11 by law.

12 (2) The appeal is made by filing a complaint with the
13 board within 30 days following receipt of notice of the
14 department action. The complaint shall set forth the grounds
15 for relief and nature of relief demanded. The board shall
16 immediately transmit a copy of the complaint to the
17 department.

18 (3) The department shall file with the board an answer
19 within 30 days following filing of a complaint, and at such
20 time mail a copy to the complainant. The answer shall set
21 forth the department's response to each ground for and type
22 of relief demanded in the complaint.

23 (4) The board shall thereafter hear the parties in
24 accordance with the contested case provisions of the Montana
25 Administrative Procedure Act.

Section 3. Section 84-603, R.C.M. 1947, is amended to read as follows:

"84-603. Application for reduction in ~~valuations~~ valuation. No reduction ~~must~~ may be made in the valuation of property unless the party affected ~~thereby~~, or his agent, makes and files with the county tax appeal board on or before the third Monday of July, a written application therefor. ~~Said~~ The application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed such reduction should be made. ~~The department of revenue shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section [84-602].~~"

Section 4. Section 84-711, R.C.M. 1947, is amended to read as follows:

"84-711. Assessment of omitted property — limitation. (1) Whenever the state department of revenue ~~shall~~, in any year, ~~discover~~ discovers that any taxable property of any person has ~~not been assessed in such year, or that it has been omitted from taxation during any previous year or years, the department may assess the same for such year or for such previous years. The order making the assessment shall contain the name of the person to whom the property is assessed, a general description of such property, its~~

~~assessed valuation, the year for which it is assessed and the county in which the same is assessed, a copy of such order shall be transmitted to the officer of the county, in whose possession the assessment books of such county are at the time of the making of such order by the department, and such officer shall immediately after receiving such copy, enter the assessment on the tax books of the county for the year in which such order is made, and thereupon such assessment shall have the same force and effect as though originally made by its agent; provided, however, that before making any such assessment the state department of revenue shall give the person to whom such property is proposed to be assessed, notice of its intention to make such assessment, and the time and place when a hearing will be had thereon; such notice to be given either by registered letter or personal service at least ten days before the date so fixed for such hearing; and provided further that all assessments of omitted property must be made within three years after the end of the calendar year in which the same should have been assessed. escaped assessment, has been erroneously assessed, or has been omitted from taxation, the department may assess the same, provided the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All such~~

revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(2) Whenever the department or its agent proposes to increase the valuation of locally assessed property above the value reported by the taxpayer under 84-409, the action of the department is subject to the notice and conference provisions of this section.

(3) (a) Notice of revised assessment pursuant to this section shall be made by the department or its agent by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. The notice shall include opportunity for a conference on the matter, at the request of the person interested, not less than 15 or more than 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes of each assessment review conference in writing, which are public records.

(c) Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference aggrieved by the action of the department may appeal directly to the state tax appeal board within 30 days

or, if the property is locally assessed, may appeal to the county tax appeal board at its next meeting.

(4) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department."

Section 5. Section 84-1841, R.C.M. 1947, is amended to read as follows:

"84-1841. Judicial review and appeals. Any determination of the department ~~hereunder~~ under this chapter or chapter 63 may be reviewed ~~by~~ appealed to the state tax appeal board which may, upon the record of a hearing, affirm, modify, or reverse the decision of the department. Any party aggrieved by the decision of the board may petition for judicial review by the district court of Lewis and Clark ~~county~~ County, and an appeal may be taken from the judgment of ~~said~~ the district court to the supreme court."

Section 6. Section 84-4923.1, R.C.M. 1947, is amended to read as follows:

"84-4923.1. Review by court. (1) The determination of the state ~~department of revenue~~ tax appeal board may be reviewed in the district court for Lewis and Clark ~~county~~ County or the county in which the taxpayer resides or has his principal office or place of business, by a complaint

1 filed by the taxpayer ~~against or~~ the state department of
 2 revenue within ~~six~~ (6) months after the receipt of notice of
 3 the decision of the state department of revenue tax appeal
 4 board. ~~Upon the serving of summons upon the state department~~
 5 ~~of revenue as in civil action, the cause shall proceed as~~
 6 ~~other civil cases. Service upon the state department of~~
 7 ~~revenue may be made by serving one copy upon the director of~~
 8 ~~the department of revenue. Proceedings for review shall be~~
 9 otherwise as specified under the Montana Administrative
 10 Procedure Act.

11 (2) The remedies provided by this chapter for the
 12 collection of the tax shall be stayed and no assessment,
 13 distraint, or proceedings in court for collection of the
 14 taxes shall may be made, begun, or prosecuted until ~~ninety~~
 15 ~~(90)~~ days after such court action is finally determined.
 16 From any determination of such court, an appeal to the
 17 supreme court may be taken by either party."

18 Section 7. Section 84-5606.24, R.C.M. 1947, is amended
 19 to read as follows:

20 "84-5606.24. Hearing or rehearing before state tax
 21 appeal board. Any person aggrieved by any action of the
 22 department or its duly authorized agents, under the
 23 provisions of this act, may apply to the state tax appeal
 24 board, in writing, for a hearing or rehearing thereon within
 25 ~~thirty~~ (30) days after such action of the department or its

1 authorized agents. The board shall promptly consider such
 2 application, set same for hearing and notify the applicant
 3 of the time and place fixed for such hearing or rehearing,
 4 which may be at its office or in the county of the
 5 applicant. After such hearing or rehearing, the board may
 6 make any further or other order in the premises, as it may
 7 deem proper and lawful and shall furnish a copy thereof to
 8 the applicant. The department, on its own initiative, may
 9 order a contested case hearing on any matter concerned with
 10 licensing (as defined in 82-4202) in connection with the
 11 administration of this act, upon at least ten (10) ~~ten~~ days'
 12 notice in writing to the person or persons to be
 13 investigated."

14 Section 8. Section 84-5606.25, R.C.M. 1947, is amended
 15 to read as follows:

16 "84-5606.25. Appeal to district court ~~notice of~~
 17 ~~appeal perfecting appeal within thirty days bond hearing~~
 18 ~~date~~. Any person aggrieved by any action or decision of the
 19 department, state tax appeal board or a licensing decision
 20 of the department made under the provisions of this act, may
 21 appeal therefrom to the district court ~~of the county where~~
 22 ~~appellant resides, which appeal shall be taken by notice of~~
 23 ~~appeal in writing, setting forth the actions or decisions of~~
 24 ~~the department, of which the appellant is aggrieved. Such~~
 25 ~~appeal shall be perfected within thirty (30) days after~~

~~notice of any action or decision of the department, and shall be taken by serving a notice of appeal upon the department and filing the same with the clerk of said court, together with a good and sufficient bond to the state of Montana. The condition of such bond shall be to the effect that appellant agrees to prosecute said appeal diligently, and if the court shall finally decide that the state is entitled to judgment, that appellant will pay the amount thereof together with costs of such appeal. The bond shall be in the form required by law and in such an amount as the court may require. The notice of appeal shall be signed by the appellant or his attorney, and the matter appealed shall be heard upon ten (10) days' notice given by either party, unless a different time is specified by the court. Said district court may grant such relief as the law and the facts in the premises require in accordance with the Montana Administrative Procedure Act."~~

Section 9. Section 67-2220, R.C.M. 1947, is amended to read as follows:

"67-2220. Determination of claims. ~~(a)~~ (1) The state department of revenue shall consider any claim filed under this act and may issue a written determination of the claim. An aggrieved claimant may appeal to the state tax appeal board, which shall hold a hearing and receive evidence concerning it the claim. If a hearing is held, the

department board shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the department board and the reasons for the department's board's decision. The decision shall be a public record.

~~(b)~~ (2) If the claim is allowed, the state department of revenue shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges."

Section 10. Section 67-2221, R.C.M. 1947, is amended to read as follows:

"67-2221. Judicial action upon determination. Any person aggrieved by a decision of the state department of ~~revenue tax appeal board~~ or as to whose claim the department has failed to act within ~~ninety~~ (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark ~~county~~ County to establish his claim. The proceeding shall be brought within ~~ninety~~ (90) days after the decision of the state department of ~~revenue tax appeal board~~ or within ~~one hundred eighty~~ (180) days from the filing of the claim if the department fails to act. The action shall be tried de novo without a jury."

Section 11. Repealer. Sections 84-440, 84-602, 84-609, and 84-710, R.C.M. 1947, are repealed.

-End-

TAXATION COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 15	Generally revise and clarify the laws relating to income, gasoline, and corporation taxes.	1/3	Marks	1/10	DO PASS	1/10/77
HB 18	To provide uniform collection procedure for license taxes on express companies, freight line and telephone, sleeping car, telephone companies, etc.	1/3	Marks	1/7	DO PASS	1/7
HB 19	To allocate duties of conducting tax case hearings; specifying procedures in appeals from county tax appeal board decisions & from dept. decisions, etc.	1/3	Marks	1/11	AS SO AMENDED DO PASS	1/28
HB 20	Correct grammar and internal references in property tax & license tax laws; etc.	1/3	Marks	1/6	DO PASS AS AMENDED	1/7
HB 25	To consolidate property tax procedures for centralized assessment of railroads, utilities, airlines, mines, oil & gas wells & to revise & clarify laws; etc.	1/3	Marks	1/10	DO PASS AS SO AMENDED DO PASS	1/28
HB 26	To correct grammar, etc. in coal severance, oil & gas severance, metal mines license tax, & resource indemnity trust tax laws, etc.	1/3	Marks	1/6	DO PASS AS AMENDED	1/7

TAXATION COMMITTEE
45TH LEGISLATURE

Chairman Rep. Herb Huennekens called the meeting to order at 8:00 a.m., January 11, 1977, in room 434, Capitol Building, Helena. All members were present.

Rep. Robert Marks, sponsor of House Bill 19, explained this is another recodification bill, and asked Mr. Roger Tippy, legislative council attorney, to explain the changes that had been made in the law by this bill

HOUSE BILL 19 which purports to allocate the duties of conducting administrative tax case hearings between the department of revenue and the state tax appeals board. This bill is not intended to abolish hearings proceedings in any way. Judicial review is intended to be clarified.

Bob Corcoran, attorney for the department of revenue, explained section 5 concerning departmental hearings. He feels the DOR should have the opportunity of settling assessment disagreements since 80-85% of the cases appealed to them have been settled satisfactorily to both the taxpayer and the department, and 90% of the gasoline appeal cases are amicably settled. He feels department hearings are of very great value and formal hearings are a duplicated effort. He suggested several amendments.

A letter from Lester H. Loble II addressed to Rep. Marks expressing his views on HB 19 is attached.

Rep. Jack Ramirez, sponsor of House Bills 73 and 74, asked if they could be considered together. Permission was granted. These bills relate to Montana laws which make out-of-state prospective money lenders for re-

HOUSE BILLS 73 & 74 lending by banks, etc., on mortgages, particularly on residential properties, reluctant to make loans to Montana. The laws relating to the necessity of qualifying to do business in Montana, and the risk of being subjected to the Montana Corporation Income Tax make Montana less attractive than other states.

HB 74 states certain things a corporation can do and if they do only these things, they can qualify to do business in Montana - out-of-state lenders are not satisfied with this language.

The income from interest on money loaned is not considered income from an activity that produces income, and this income has not been taxed by Montana in the past. However, several other states do tax this type of income.

Bill Sternhagen, Anaconda Co, gave the committee a copy of the law enacted August 1963, Exhibit A and a copy of the federal moratorium which expired in September 1976, Exhibit B. He feels Montana should clarify whether this type of interest income is going to be taxed as this uncertainty makes it difficult for Montana to obtain money for loans.

Jon Clifford, Security Bank, N.A., Billings, deals with out-of-state mortgage investors and supports this bill so Montana can have the benefit of out-of-state money for relending. Banks charge a fee for handling these accounts, and they pay tax on this fee income. He would like to see clarification of Montana

A subcommittee was appointed: Rep. E.N.Dassinger, chairman; Reps. Les Hirsch and Elmer Severson.

Rep. Fabrega, sponsor of House Bill 98, stated this bill provides a penalty on any underreported portion of inventories of 25% or the amount due on the underreported portion. It is felt the penalty in relationship to the cost of ascertaining accuracy justifies the 25% penalty.

HOUSE BILL 98 Also HB 98 is to provide an effective date of January 1, 1978, as is proposed in a suggested amendment.

Edward Nelson, Montana Taxpayers Association, neither proposes nor opposes this bill, but approves the proposed amendment wherein the penalty applies only to the underreported portion of any tax due. Suggests tying this new language to appeal and review process currently in progress.

Tom Winsor, Montana Chamber of Commerce, is neither for nor against HB 98, but recognizes problems in complying with old laws was their misapplication. The average retailer doesn't know what his tax base is. He believes the 25% penalty is too high when other penalties are much less.

Don Pratt, Montana Funeral Directors' Association, and Montana Optometric Association is neither for nor against the bill, but is concerned about the retroactivity that might be done regarding audits. Wants to know time elements and periods to which penalty applies.

Dennis Burr advised the question of auditing is not determined.

The question of what percentage is to be considered underreporting arose. A county assessor can check with the state tax return, and if an audit seems necessary, one can be made. Effective date could be after 1976.

Committee adjourned to go to an executive session.

HOUSE BILL 97 - Rep. Edward Lien made a motion to recommend that House Bill 97 DO PASS. Rep. Sivertsen moved that an amendment inserting "and" after "cement" on page 1, section 1, line 12 be made. Amendment was adopted unanimously. The DO PASS motion was unanimously adopted as amended. Rep. Fagg was absent.

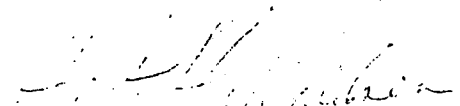
HOUSE BILL 101 - Rep. Dan Harrington made the motion to recommend House Bill 101 DO PASS. Motion was adopted unanimously. Rep. Fagg was absent.

HOUSE BILL 47 - Rep. E.N.Dassinger made the motion that HB 47 be amended as shown on attached committee report. Unanimously adopted. Rep. Edward Lien moved that House Bill 47 AS SO AMENDED DO PASS. Motion was unanimously approved. Rep. Fagg was absent.

HOUSE BILL 19 - This bill was further considered and Terry Cohea is to write appropriate amendments.

A subcommittee on HB 96 was appointed - Reps. Fabrega and Lien.

Committee adjourned at 11:45 a.m.


REP. HERB HUENNKENS, Chairman

Rep. Moore closed stating that lowering the tax doesn't affect any of the present coal contracts and there hasn't been a new coal contract initiated since the higher taxation went into effect after the 1975 legislation. The purpose of this bill is to decrease the environmental degradation. Because of the shortage of natural gas, we are going to have to go to more and more coal use, and with compliance coal to burn shipped directly from the mine, it will make the environment stay cleaner.

Questions from the committee revealed that a loss of 7-10 % of the coal might occur in scrubbing operations. The processes for making compliance coal are in the experimental stages, and it may take five years to develop one that will clean up sulfurous coal. Some blending of compliance and noncompliance coal makes for acceptable coal. Some utilities are attempting to buy coal from various sources and blend it to acceptable SO₂ residues.

There is plenty of compliance coal in Montana, but it is not being mined at the present time. The government evidently holds the land and may put it up for lease at some time in the future. There is not enough research on clean-up of coal to know what could be done with various types of coal.

Only the coal subjected to an environmentally beneficial process would be put into the 20% tax bracket. Coal can now be mined with such a low sulfur content that it would be taxable at 20% without any processing.

Mr. Murry said they are in favor of the coal industry when it meets standards set and would be in favor of having coal cleaned up at the sight of mining. Freight rates are about \$2 per ton. Scrubbers would raise the cost of producing coal 20-25% and operating costs would be increased by 20-25% also.

HB 269 allows a 30% tax on coal as it comes out of the ground before any processing for beneficiation. Coal has to be sized and may be oiled, and big mines do not handle retail coal.

Rep. Dan Harrington, District #88, Silver Bow County, sponsor of HB 324, explained this bill provides that special assessments levied against the frontage feet of a lot may be levied against only the shorter side of a corner lot.

HOUSE BILL	In a platted block, the frontage is the shorter of the two
324	abutting sides.

The committee recessed to an executive session.

HOUSE BILL 19 - Rep. O'Keefe made a motion that HB 19 be recommended AS AMENDED DO PASS. Motion carried unanimously.

HOUSE BILL 25 - Rep. O'Keefe moved that HB 25 be placed in front of the committee. Motion was accepted. He then moved that HB 25 be amended. Motion on amendments was adopted. Rep. O'Keefe moved that HB 25 AS AMENDED DO PASS. Motion carried.

HOUSE BILL 321 - Rep. Fabrega moved that HB 321 DO PASS. Unanimously adopted.

HOUSE BILL 102 - Rep. Lien moved that HB 102 DO NOT PASS. Unanimously adopted.

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 5, 1977

The thirty-third meeting of the Taxation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Mathers at 8:05 a.m.

ROLL CALL: Roll call found all members present but Sens. Brown, Roskie and Towe, who were excused.

The only witness present was Lester Loble, representing Montana-Dakota Utilities.

CONSIDERATION OF HOUSE BILL 20: Roger Tippy introduced this bill which he states merely clarifies some of the language in the codes, section 84-201, 202 and 406. He distributed Exhibits #1, 2 and 3, attached where explanations and references were made. He explained the repealers and following his presentation, there were questions by the committee and an amendment, #1, was adopted.

Sen. Turnage Moved to Adopt Amend. 1, voting unanimous.

DISPOSITION: Sen. Turnage then Moved HB20, As Amended, Be Concurred In. Motion was carried unanimously. (Sen. Watt to carry bill on floor.)

CONSIDERATION OF HOUSE BILL 19: Mr. Tippy also presented this bill and said that a number of mistakes had been made when this legislation was first introduced in 1973 and this bill will amend the sections concerning appeals to the S.T.A.B. and sets up procedures in the Department of Revenue for an assessment review. Mr. Loble introduced Exh. #4, attached, his amendment, which he said he would like to have amended into the bill. He believed anyone should have the right to a hearing other than the 'people's court' as specified in the bill and his amendment would give any taxpayer the right to appeal as he wished.

His amendment was discussed by the committee and they agreed to its adoption.

Sen. Turnage Moved Amend. #1 Be Adopted. The motion was carried unanimously.

DISPOSITION: Sen. Turnage Moved HB19 As Amended, Be Concurred In. The motion was carried unanimously.

CONSIDERATION OF HOUSE BILL 25: This also was a recodification bill and Mr. Tippy explained it in its entirety, pointing out grammatical corrections and clarifications that had been made in the bill. Several amendments were proposed and discussed by the committee, and they agreed on their adoption.

ROLL CALL

SENATE TAXATION COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/5/77

NAME	PRESENT	ABSENT	EXCUSED
SEN. WATT	✓		
SEN. BROWN	<i>Excused</i>		
SEN. GOODOVER	✓		
SEN. HEALY	✓		
SEN. MANNING	✓		
SEN. NORMAN	✓		
SEN. ROSKIE	<i>Excused</i>		
SEN. TOWE	<i>Excused</i>		
SEN. TURNAGE	✓		
CHAIRMAN MATHERS	✓		

HOUSE MEMBERS

ROBERT L. MARKS
CHAIRMAN

FRANCIS BARDANOUVE

SCAR KVALEN

AT MCKITTRICK

JOSE WEBER
EXECUTIVE DIRECTOR

AMELA DUENSING
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY
SUPERVISOR, ALTER SYSTEM



Montana Legislative Council

State Capitol

Helena, 59601

Exh. #1, 2, 3

SENATE MEMBERS

NEIL J. LYNCH
VICE CHAIRMAN

GLEN DRAKE

CARROLL GRAHAM

FRANK HAZELBAKER

DIANA DOWLING
DIRECTOR, LEGAL SERVICES;
CODE COMMISSIONER

ROBERT PERSON
DIRECTOR, RESEARCH

LC0016

1977 Legislature
Code Commissioner Bill - Summary

House Bill No. 19

TO ALLOCATE THE DUTIES OF CONDUCTING ADMINISTRATIVE TAX
CASE HEARINGS, ETC.

(This summary does not include discussion of routine form
or grammatical changes.) Summary by Roger Tippy.

Once upon a time, the entities involved in setting and collecting property taxes were known as the assessor, the board of county commissioners, and the state board of equalization. In 1973, references to all these entities in the tax statutes were rather mechanically changed to "department of revenue" or "state tax appeal board" without much attention to the resultant administrative structure. For instance, the assessor (in 84-440), the county commissioners (in 84-609), and the state board of equalization (in 84-711) each had authority to assess property which had escaped assessment. The procedures and limits on the authority of each differed, as their respective offices differed. Yet each reference was changed to "department of revenue" in 1973. The department has its choice among 3 code sections when it assesses omitted property now.

The statutes also reflect confusion as to the timing of a formal adjudicatory hearing in taxpayer-department disputes. While the state tax appeal board (STAB) is generally recognized as the formal hearing board for such cases, a number of sections call for hearings within the department. The APA's contested case provisions apply to these department hearings, which entails formality and an effort to develop a full record. Yet STAB maintains its duty is to develop a full record; consequently the department hearing is wasted time for all parties.

This represents an effort to rationalize administrative procedures in tax disputes upon the premises that (1) the department would have a single procedure for revising assessments and inserting omitted assessments, with opportunity for an informal conference at the department followed by a formal hearing before STAB, and (2) appeal procedure would be spelled out in cases going directly from department to STAB, i.e., not via the county tax appeal boards. These cases comprehend centralized utility

and mine assessments, Class 7 determinations, and all non-property tax matters.

Analysis of the bill:

Section 1. 84-709. Amendment in (4) emphasizes informality of appeals from county appeal board decisions and clarifies STAB's power to adopt its own rules of practice and procedure.

Section 2. New section, outlining separate procedure for direct appeals from department to STAB. Contested case procedures of Montana APA would apply to these appeals without the exemptions created for cases coming from county boards.

Section 3. 84-603. Amendment deletes reference to provision in 84-602 (which is to be repealed) dealing with old power of county commissioners to reduce the assessment ratio on an entire class of property in the county. Now, legislature has enacted standard assessment ratios for realty and department handles assessment ratios for personalty under notice and hearing rule making proceedings.

Section 4. 84-711. Amendment basically establishes new procedure for revising assessments. 10-year "statute of limitations" parallels 10-year limit on collecting personal property taxes enacted in 1975. Under old law, 3-year limit applied to state board of equalization while no time limit was set on assessor's revision authority.

Subsection (2) replaces first paragraph of 84-710, which as presently worded is at odds with reality. This says the department, "before making any change in the assessment of any property" must schedule a hearing on the change and send notice to the taxpayer by certified mail. Read literally, this applies to every automobile assessment every year, since the value changes in the blue book, with depreciation, every year. What the law covered before '73 (state board changing assessor's values) would be expressed again under the proposed language, i.e., those items like livestock and farm machinery valued from reports filed by the taxpayer are covered when the department revises the value from the reported figure.

Subsection (3) replaces the formal hearing procedures set out in 84-609, 84-710, and 84-711 with standard requirements for notice, conference, department action after conference, and appeals from that action.

Subsection (4) provides for response in the county courthouse to an order revising an assessment.

Section 5. 84-1841. Shifts formal hearings and judicial review thereof in gasoline tax cases from department to STAB.

Section 6. 84-4923.1. Shifts formal hearings and judicial review thereof in income tax cases from department to STAB.

Under 84-4922, Dept. still holds session hearing.

Section 7. 84-5606.24. Recognizes department hearings in any cigarette vendor case involving licensing qualifications rather than revenue.

Section 8. 84-5606.25. Provides for judicial review of STAB decision in cigarette tax case or of department decision if case involves licensing rather than revenue.

Dept. hearing under 84-5606.25.

Section 9. 67-2220. Shifts formal hearing under Abandoned Property statutes from department to STAB.

Section 10. 67-2221. Shifts judicial review of formal hearings in abandoned property disputes from department decision to STAB decision.

Section 11. Repeals:

84-440, authorizing department to assess at any time property which is discovers to have escaped assessment.

84-602, authorizes department to increase or lower assessments to equalize and match true value, upon notice and hearing, and to change the assessment ratio of an entire class within a county.

84-609, authorizes department to direct assessor to list any property which had escaped assessment and to revise assessments, and directs county clerk to notify all interested parties.

84-710, requires department to send notice by certified mail before revising any assessment, requires department to hold hearing before changing assessment ratio of any class within a county.

HB 19

Exh. # 4

Amend Section 1, p 3, line 7

Following: "board"

Strike: "shall not be bound by
the common law and statutory
rules of evidence or rules
of discovery and"

amendment to preserve "people's court"
concept:

Amend Section 1, p 3 line 8

Following: "discovery"

insert: "unless the taxpayer demands that
either or both of the rules of
discovery or evidence apply"

HOUSE BILL NO. 19

INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOCATE THE DUTIES OF CONDUCTING ADMINISTRATIVE TAX CASE HEARINGS BETWEEN THE DEPARTMENT OF REVENUE AND THE STATE TAX APPEAL BOARD; SPECIFYING PROCEDURES IN APPEALS FROM COUNTY TAX APPEAL BOARD DECISIONS AND FROM DEPARTMENT DECISIONS; ABOLISHING PROCEDURES INCONSISTENT THEREWITH; AMENDING SECTIONS 67-2220, 67-2221, 84-603, 84-709, 84-711, 84-1841, 84-4923.1, 84-5606.24, AND 84-5606.25, R.C.M. 1947; REPEALING SECTIONS 84-440, 84-602, 84-609, AND 84-710, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 84-709, R.C.M. 1947, is amended to read as follows:

"84-709. Appeal to state tax appeal board -- hearing.
(1) Any person, firm, or corporation or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the state board within ten (10) days after the receipt of the decision of the county board, which

notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem considers advisable to facilitate the performance of its duties or to accommodate parties in interest and shall give to the appellant and to the county board at least five (5) days' notice of the time and place of such hearing.

(2) At the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one (1) of its members, and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board, and the state board shall determine such appeal on the record so made.

(3) On all hearings at county seats throughout the

REFERENCE BILL

1 state, the state board or the member designated to conduct a
 2 hearing may employ the local court reporter or other
 3 competent stenographer to take and transcribe the testimony
 4 received, and the cost thereof may be paid out of the
 5 general appropriation for the board.

6 (4) In connection with any appeal under this section
 7 the state board shall not be bound by common law and
 8 statutory rules of evidence or rules of discovery and shall
 9 have the authority to may affirm, reverse, or modify any
 10 decision appealable to the state tax appeal board; the The
 11 decision of the state tax appeal board shall be final and
 12 binding upon all interested parties unless reversed or
 13 modified by judicial review. To the extent this section is
 14 in conflict with the Montana Administrative Procedure Act,
 15 this section shall supersede that act the Montana
 16 Administrative--Procedure--Act. The state tax appeal board
 17 shall may not have authority to amend or repeal any
 18 administrative rule or--regulation of the department of
 19 revenue. The state tax appeal board must give an
 20 administrative rule or--regulation full effect unless the
 21 board finds any such rule or--regulation arbitrary,
 22 capricious, or otherwise unlawful."

23 Section 2. There is a new R.C.M. section that reads as
 24 follows:

25 Direct appeal from department decision to state tax

1 appeal board -- hearing. (1) A person may appeal to the
 2 state tax appeal board any action of the department of
 3 revenue involving:

4 (a) property centrally assessed under chapters 8, 9,
 5 13, 54, 62, or 64 of this title;

6 (b) classification of property as new industrial
 7 property;

8 (c) any other tax (other than the property tax)
 9 imposed under this title; or

10 (d) any other matter in which such appeal is provided
 11 by law.

12 (2) The appeal is made by filing a complaint with the
 13 board within 30 days following receipt of notice of the
 14 department action. The complaint shall set forth the grounds
 15 for relief and nature of relief demanded. The board shall
 16 immediately transmit a copy of the complaint to the
 17 department.

18 (3) The department shall file with the board an answer
 19 within 30 days following filing of a complaint, and at such
 20 time mail a copy to the complainant. The answer shall set
 21 forth the department's response to each ground for and type
 22 of relief demanded in the complaint.

23 (4) The board shall thereafter hear the parties in
 24 accordance with the contested case provisions of the Montana
 25 Administrative Procedure Act.

1 revised assessments must be made within 10 years after the
 2 end of the calendar year in which the original assessment
 3 was or should have been made.

4 (2) Whenever the department or its agent proposes to
 5 increase the valuation of locally assessed property above
 6 the value reported by the taxpayer under 84-409, the action
 7 of the department is subject to the notice and conference
 8 provisions of this section.

9 (3) (a) Notice of revised assessment pursuant to this
 10 section shall be made by the department or its agent by
 11 postpaid letter addressed to the person interested within 10
 12 days after the revised assessment has been made. The notice
 13 shall include opportunity for a conference on the matter, at
 14 the request of the person interested, not less than 15 or
 15 more than 30 days after notice is given.

16 (b) An assessment revision review conference is not a
 17 contested case as defined in the Montana Administrative
 18 Procedure Act. The department shall keep minutes of each
 19 assessment review conference in writing, which are public
 20 records.

21 (c) Following an assessment review conference or
 22 expiration of opportunity therefor, the department shall
 23 order such assessment as it considers proper. Any party to
 24 the conference aggrieved by the action of the department may
 25 appeal directly to the state tax appeal board within 30 days

1 or, if the property is locally assessed, may appeal to the
 2 county tax appeal board at its next meeting.

3 (4) Immediately upon receipt of a revised assessment,
 4 the county official possessing the assessment roll book
 5 shall enter the revised assessment. If the revised
 6 assessment corrects an original assessment, the previous
 7 entry shall be canceled upon order of the department."

8 Section 5. Section 84-1841, R.C.M. 1947, is amended to
 9 read as follows:

10 "84-1841. Judicial review and appeals. Any FINAL
 11 WRITTEN determination of BY the department DIRECTOR OF THE
 12 DEPARTMENT hereunder under this chapter or chapter 63 may be
 13 reviewed--by appealed to the state tax appeal board which
 14 may, upon the record of a hearing, affirm, modify, or
 15 reverse the decision of the department. Any party aggrieved
 16 by the decision of the board may petition for judicial
 17 review by the district court of Lewis and Clark county
 18 County, and an appeal may be taken from the judgment of said
 19 the district court to the supreme court."

20 Section 6. Section 84-4923.1, R.C.M. 1947, is amended
 21 to read as follows:

22 "84-4923.1. Review by court. (1) The determination of
 23 the state department-of-revenue tax appeal board may be
 24 reviewed in the district court for Lewis and Clark county
 25 County or the county in which the taxpayer resides or has

1 Section 3. Section 84-603, R.C.M. 1947, is amended to
2 read as follows:

3 "84-603. Application for reduction in valuations
4 valuation. No reduction ~~must~~ may be made in the valuation
5 of property unless the party affected thereby, or his agent
6 makes and files with the county tax appeal board on or
7 before the third Monday of July, a written application
8 therefor. ~~Said~~ The application shall state the post-office
9 address of the applicant, shall specifically describe the
10 property involved, and shall state the facts upon which it
11 is claimed such reduction should be made. ~~The department of~~
12 ~~revenue shall, however, have the right to raise or lower the~~
13 ~~valuation of all of one class of property in a county, as~~
14 ~~provided in the preceding section [84-602]."~~

15 Section 4. Section 84-711, R.C.M. 1947, is amended to
16 read as follows:

17 "84-711. Assessment of omitted property -- limitation.
18 (1) Whenever the state department of revenue ~~shall~~, in any
19 year, ~~discover~~ discovers that any taxable property of any
20 person has ~~not been assessed in such year or that it has~~
21 ~~been omitted from taxation during any previous year or~~
22 ~~years, the department may assess the same for such year or~~
23 ~~for such previous years. The order making the assessment~~
24 ~~shall contain the name of the person to whom the property is~~
25 ~~assessed, a general description of such property, its~~

1 ~~assessed valuation, the year for which it is assessed and~~
2 ~~the county in which the same is assessed. A copy of such~~
3 ~~order shall be transmitted to the officer of the county in~~
4 ~~whose possession the assessment books of such county are at~~
5 ~~the time of the making of such order by the department and~~
6 ~~such officer shall immediately after receiving such copy~~
7 ~~enter the assessment on the tax books of the county for the~~
8 ~~year in which such order is made and thereupon such~~
9 ~~assessment shall have the same force and effect as though~~
10 ~~originally made by its agent; provided, however, that before~~
11 ~~making any such assessment the state department of revenue~~
12 ~~shall give the person to whom such property is proposed to~~
13 ~~be assessed, notice of its intention to make such~~
14 ~~assessment, and the time and place when a hearing will be~~
15 ~~had thereon; such notice to be given either by registered~~
16 ~~letter or personal service at least ten days before the date~~
17 ~~so fixed for such hearing; and provided further that all~~
18 ~~assessments of omitted property must be made within three~~
19 ~~years after the end of the calendar year in which the same~~
20 ~~should have been assessed.~~ escaped assessment, has been
21 erroneously assessed, or has been omitted from taxation, the
22 department may assess the same, provided the property is
23 under the ownership or control of the same person who owned
24 or controlled it at the time it escaped assessment, was
25 erroneously assessed, or was omitted from taxation. All such

1 his principal office or place of business, by a complaint
 2 filed by the taxpayer against ~~or~~ the state department of
 3 revenue within ~~six~~ {6} months after the receipt of notice of
 4 the decision of the state department of revenue tax appeal
 5 board. Upon the serving of summons upon the state department
 6 of revenue as in civil action, the cause shall proceed as
 7 other civil cases. Service upon the state department of
 8 revenue may be made by serving one copy upon the director of
 9 the department of revenue. Proceedings for review shall be
 10 otherwise as specified under the Montana Administrative
 11 Procedure Act.

12 {2} The remedies provided by this chapter for the
 13 collection of the tax shall be stayed and no assessment,
 14 distraint, or proceedings in court for collection of the
 15 taxes shall ~~may~~ be made, begun, or prosecuted until ninety
 16 {90} days after such court action is finally determined.
 17 From any determination of such court, an appeal to the
 18 supreme court may be taken by either party."

19 Section 7. Section 84-5606.24, R.C.M. 1947, is amended
 20 to read as follows:

21 "84-5606.24. Hearing or rehearing before state tax
 22 appeal board. Any person aggrieved by any action of the
 23 department or its duly authorized agents, under the
 24 provisions of this act, may apply to the state tax appeal
 25 board, in writing, for a hearing or rehearing thereon within

1 ~~thirty~~{30} days after such action of the department or its
 2 authorized agents. The board shall promptly consider such
 3 application, set same for hearing and notify the applicant
 4 of the time and place fixed for such hearing or rehearing,
 5 which may be at its office or in the county of the
 6 applicant. After such hearing or rehearing, the board may
 7 make any further or other order in the premises, as it may
 8 deem proper and lawful and shall furnish a copy thereof to
 9 the applicant. The department, on its own initiative, may
 10 order a contested case hearing on any matter concerned with
 11 licensing (as defined in 82-4202) in connection with the
 12 administration of this act, upon at least ~~ten~~{10} days'
 13 notice in writing to the person or persons to be
 14 investigated."

15 Section 8. Section 84-5606.25, R.C.M. 1947, is amended
 16 to read as follows:

17 "84-5606.25. Appeal to district court ~~notice of~~
 18 ~~appeal--perfecting appeal within thirty days--bond--hearing~~
 19 ~~date.~~ Any person aggrieved by any action or decision of the
 20 department, state tax appeal board or a licensing decision
 21 of the department made under the provisions of this act, may
 22 appeal therefrom to the district court ~~of the county where~~
 23 ~~appellant resides, which appeal shall be taken by notice of~~
 24 ~~appeal in writing, setting forth the actions or decisions of~~
 25 ~~the department of which the appellant is aggrieved. Such~~

~~1 appeal shall be perfected within thirty (30) days after~~
~~2 notice of any action or decision of the department, and~~
~~3 shall be taken by serving a notice of appeal upon the~~
~~4 department and filing the same with the clerk of said court,~~
~~5 together with a good and sufficient bond to the state of~~
~~6 Montana. The condition of such bond shall be to the effect~~
~~7 that appellant agrees to prosecute said appeal diligently,~~
~~8 and if the court shall finally decide that the state is~~
~~9 entitled to judgment, that appellant will pay the amount~~
~~10 thereof together with costs of such appeal. The bond shall~~
~~11 be in the form required by law and in such an amount as the~~
~~12 court may require. The notice of appeal shall be signed by~~
~~13 the appellant or his attorney, and the matter appealed shall~~
~~14 be heard upon ten (10) days' notice given by either party,~~
~~15 unless a different time is specified by the court. Said~~
~~16 district court may grant such relief as the law and the~~
~~17 facts in the premises require in accordance with the Montana~~
~~18 Administrative Procedure Act."~~

19 Section 9. Section 67-2220, R.C.M. 1947, is amended to
 20 read as follows:

21 "67-2220. Determination of claims. ~~(a)~~ (1) The state
 22 department of revenue shall consider any claim filed under
 23 this act and may issue a written determination of the claim.
 24 An aggrieved claimant may appeal to the state tax appeal
 25 board, which shall hold a hearing and receive evidence

1 concerning ~~it~~ the claim. If a hearing is held, the
 2 department board shall prepare a finding and a decision in
 3 writing on each claim filed, stating the substance of any
 4 evidence heard by the department board and the reasons for
 5 the department's board's decision. The decision shall be a
 6 public record.

7 ~~(b)~~ (2) If the claim is allowed, the state department
 8 of revenue shall make payment forthwith. The claim shall be
 9 paid without deduction for costs of notices or sale or for
 10 service charges."

11 Section 10. Section 67-2221, R.C.M. 1947, is amended
 12 to read as follows:

13 "67-2221. Judicial action upon determination. Any
 14 person aggrieved by a decision of the state department of
 15 revenue tax appeal board or as to whose claim the department
 16 BOARD has failed to act within ninety ~~(90)~~ days after the
 17 filing of the claim, may commence an action in the district
 18 court of Lewis and Clark county County to establish his
 19 claim. The proceeding shall be brought within ninety ~~(90)~~
 20 days after the decision of the state department ~~of revenue~~
 21 tax appeal board or within one-hundred-eighty ~~(180)~~ days
 22 from the filing of the claim if the department BOARD fails
 23 to act. The action shall be tried de novo without a jury."

24 Section 11. Repealer. Sections 84-440, 84-602, 84-609,
 25 and 84-710, R.C.M. 1947, are repealed.

-End-